



OFFICE OF STATE PUBLIC DEFENDER

ANDRÉ DE GRUY, STATE DEFENDER

P.O. Box 3510

JACKSON, MISSISSIPPI 39207

601-576-4290

[WWW.OSPD.MS.GOV](http://www.ospd.ms.gov)

STATEMENT ON CAPITAL CONFLICT CASES

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The purpose of the Capital Defense Counsel Act of 2000 was to relieve the counties of most of the financial burden of death penalty prosecutions at the trial and direct appeal level. The Office of Capital Defense Counsel began operation in 2001 and continues today as a division of the Office of State Public Defender (OSPD).

Capital Defense currently has 8 employees, down from 11 at the time of the creation of the OSPD (2011). The staff reductions (an attorney, investigator and mitigation specialist position) were made over several years as a result of efficiencies from the consolidation into OSPD and decline in caseload. At current staffing and assuming local counsel in most cases Capital Defense can handle a mix of 10-15 new trial level cases per year and/or 3 new appeals per year.

Regardless of caseload, pursuant to rules of professional responsibility, Capital Defense can never handle cases involving a conflict of interest. The Act recognized this situation. *Miss. Code* §99-18-17. Beginning in FY 2003, with a legislatively created source of special funds, the office began contracting with private counsel to handle conflict cases. These cases were funded through the Capital Defense Fund established by *Miss. Code* §99-18-17.¹

This program only began meeting statewide need after consolidation and the State Defender assumed responsibility for recruiting and monitoring contracts. From 2011 through 2016 OSPD contracted on ten cases or an average of two per year. It is anticipated that this is actual need and it will remain level.

SB 2362 (2016 Regular Session) made OSPD a general fund agency effective July 1, 2016. The Capital Defense Fund was abolished and the balance transferred to the State General Fund. This raises questions about the authority to continue the conflicts program. The program has been suspended until these issues can be resolved. Two of the four² existing contracts will be honored by the State Defender as long as sufficient funds exist but new contracts are not being entered into.

As an example of the impact this has on counties, Lawrence County is now faced with full funding of a death penalty eligible case. Two men were charged in the first death eligible case in the county in recent years. OSPD provided representation in one case and cannot ethically handle the co-defendant's case.

The cost of qualified death penalty defense counsel, mitigation investigation and experts could easily cost the county well over \$75,000.³ This would be on top of the cost of selecting and sequestering a death penalty qualified jury, estimated at over \$60,000 based on Montgomery County's well documented experiences.⁴

¹ In FY 2006 the office became a Special Fund agency. From its creation until June 30, 2016, OSPD operated as a Special Fund agency, funded in part by the Capital Defense Fund.

² Local counsel in two cases has advised OSPD that the death penalty is no longer being pursued by the District Attorney putting these cases outside the scope of OSPD.

³ The total cost for defense services including experts in *State v. Baxter*, a George County conflict case, was approximately \$125,000.

⁴ Testimony of Montgomery County Chancery Clerk before the Public Defender Task Force.

<http://www.ospd.ms.gov/Task%20Force/2007%20Report%20to%20Legislature%20final.pdf>

